

Henry C. Su (SBN 211202; suh@howrey.com)
Katharine L. Altemus (SBN 227080; altemusk@howrey.com)
HOWREY LLP
1950 University Avenue, 4th Floor
East Palo Alto, California 94303
Telephone: (650) 798-3500
Facsimile: (650) 798-3600

Robert Ruyak
Matthew Wolf
Marc Cohn
HOWREY LLP
1229 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 783-0800
Facsimile: (202) 383-6610

Attorneys for Plaintiffs
HOLOGIC, INC., CYTYC CORPORATION and HOLOGIC LP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HOLOGIC, INC., CYTYC CORPORATION,
and HOLOGIC L.P.,

Plaintiffs,

vs.

SENORX, INC.,

Defendant.

AND RELATED COUNTERCLAIMS.

Case No. C08 00133 RMW (RS)

**NOTICE OF ADMINISTRATIVE MOTION
AND ADMINISTRATIVE MOTION TO
SHORTEN TIME ON PLAINTIFFS'
MOTION TO COMPEL RESPONSES TO
CERTAIN INTERROGATORIES**

Date: No hearing requested
Judge: Hon. Richard Seeborg

NOTICE OF MOTION AND MOTION TO SHORTEN TIME

Pursuant to Federal Rule of Civil Procedure 6(d) and Civil Local Rule 6-3 Plaintiffs Hologic, Inc., Cytoc Corporation, and Hologic L.P. (collectively, "Hologic") hereby move to shorten the time for Defendant SenoRx, Inc.'s ("SenoRx") response to, and this Court's consideration of, its Notice of Motion and Motion to Compel Responses To Certain Interrogatories ("Motion to Compel"), also served and filed on this date. Specifically, Hologic seeks an expedited briefing schedule under which: (1) SenoRx would file its Opposition to Hologic's Motion to Compel, if any, no later than Friday March 21, 2008, and (2) Hologic would forego a written Reply to SenoRx's Opposition. Hologic further requests that the Court dispense with the requirement of a hearing on its Motion to Compel and issue a ruling based on the papers.

The Memorandum of Points and Authorities below and the accompanying Declaration of Katharine L. Altemus establish good cause for this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

Good cause exists to shorten the time with respect to the resolution of Hologic's Motion to Compel.¹ On February 29, 2008, at the initial case management conference conducted by Judge Whyte, the parties agreed to respond to each other's Interrogatories within a shortened period of time (10 days). Declaration Of Katharine L. Altemus In Support Of Plaintiffs' Motion To Shorten Time On Plaintiffs' Motion To Compel, ¶ 3. The parties agreed to limit their Interrogatories to seek information relevant and necessary for the scheduled April 21, 2008 Preliminary Injunction hearing. *Id.*, ¶ 3. Indeed, both parties served nearly identical sets of Interrogatories, seeking positions on infringement/non-infringement of the two claims at issue in the Motion for Preliminary Injunction as well as contentions regarding irreparable harm.

\\

¹ Rule 6 of the Federal Rules of Civil Procedure authorizes this Court, in its discretion, to issue an order shortening time with respect to the briefing and hearing on Hologic's Motion to Compel. Fed. R. Civ. P. 6(d). *See also United States v. Fitch*, 472 F.2d 548, 549 n.5 (9th Cir. 1973) ("Rule 6(d), F. R. Civ. P., allows the district court discretion to shorten time.").

Hologic timely answered SenoRx's interrogatories, setting forth its bases for infringement and irreparable harm. SenoRx, however, refused to answer Hologic's Interrogatories Nos. 1-3 regarding non-infringement and harm. *Id.* Instead, SenoRx stated that it would not disclose any information regarding its contentions on these issues except in the context of its Opposition to the Motion for Preliminary Injunction due on March 28, 2008 – a mere ten calendar days before Hologic's reply brief is due. *Id.* SenoRx's position is contrary to the parties' agreement on the discovery and briefing schedule on the Motion for Preliminary Injunction, and deprives Hologic of any meaningful opportunity for discovery prior to the due date of its Reply Brief. *Id.*, ¶¶ 4, 5.

A shortened briefing schedule and a dispensation of the hearing requirement are imperative in light of the current schedule:

- the hearing on the Motion for Preliminary Injunction is scheduled for April 21, 2008;
- SenoRx's Opposition to Hologic's Motion for Preliminary Injunction is due March 28, 2008;
- and
- Hologic's Reply to SenoRx's Opposition is due April 7, 2008.

Critically, Hologic has noticed the Rule 30(b)(6) corporate deposition of SenoRx, and has asked SenoRx to present the designee(s) on Monday, March 24 or Tuesday, March 25, 2008, and Hologic must have SenoRx's answers to its Interrogatories by then so that its counsel can examine SenoRx's designee(s) about them. If Hologic were forced to await SenoRx's brief on March 28, 2008 before learning of its positions on noninfringement and irreparable harm, then the Rule 30(b)(6) deposition, as well as additional depositions of anyone on whom SenoRx relies for a declaration in support of its brief, would have to occur in the single remaining week before Hologic's reply brief is due. There is simply no time under the current schedule to allow SenoRx to put off responding to Hologic's interrogatories. In any event, as set forth in Hologic's Motion to Compel., there is no basis for not answering now. SenoRx has the information that is being requested – it had to have a basis for answering the Complaint and denying that it infringed – and Hologic's discovery was timely propounded.

\\

1 If it were noticed on the regular motions calendar, Hologic's Motion to Compel would not be
2 heard until after the Preliminary Injunction hearing. Hologic, therefore, respectfully requests a
3 shortened briefing schedule on its Motion to Compel and a dispensation of the hearing requirement so
4 that this discovery dispute can be resolved promptly. The discovery dispute that is being presented is
5 simple and discrete, and the parties' positions can be adequately presented on the papers. Hologic
6 proposes a briefing schedule under which: (1) SenoRx would file its Opposition to Hologic's Motion
7 to Compel, if any, no later than March 21, 2008, and (2) Hologic would forego a written Reply to
8 SenoRx's Opposition. If Hologic's Motion to Compel is not resolved on an expedited basis, then the
9 limited discovery being conducted in connection with the Motion for Preliminary Injunction will have
10 been completely one-sided -- Hologic disclosing its contentions and key facts to SenoRx but receiving
11 no responsive discovery in kind.

12 Pursuant to Fed. R. Civ. P. 37 and Civ. L.R. 37-1(a), counsel met and conferred in person on
13 March 18, 2008 regarding SenoRx's inadequate responses to Hologic's Interrogatories. SenoRx
14 indicated that it could not respond to the motion until early next week, but permitting such a delay on
15 this issue would negate any effect of Hologic's Motion to Compel, should it be granted. The parties
16 could not agree on a briefing schedule, thereby necessitating Hologic's filing of the present Motion.
17 *Id.*, ¶ 6. SenoRx did indicate, however, that it was agreeable to dispensing with the requirement of a
18 hearing if Hologic were willing to waive the filing of a reply, which Hologic is.

19 \\
20
21
22
23
24
25
26
27
28

CONCLUSION

For the foregoing reasons, Hologic respectfully requests that this Court enter the accompanying proposed order establishing an expedited briefing schedule for Hologic’s Motion to Compel.

Dated: March 19, 2008

HOWREY LLP

By: /s/
Katharine L. Altemus

HOWREY LLP
Attorneys for Plaintiffs
Hologic, Inc., Cytoc Corporation,
and Hologic LP

Henry C. Su (SBN 211202; suh@howrey.com)
Katharine L. Altemus (SBN 227080; altemusk@howrey.com)

HOWREY LLP
1950 University Avenue, 4th Floor
East Palo Alto, California 94303
Telephone: (650) 798-3500
Facsimile: (650) 798-3600

Robert Ruyak
Matthew Wolf
Marc Cohn
HOWREY LLP
1229 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 783-0800
Facsimile: (202) 383-6610

Attorneys for Plaintiffs
HOLOGIC, INC., CYTYC CORPORATION and HOLOGIC LP

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HOLOGIC, INC., CYTYC CORPORATION,
and HOLOGIC L.P.,

Plaintiffs,

vs.

SENORX, INC.,

Defendant.

AND RELATED COUNTERCLAIMS.

Case No. C08 00133 RMW (RS)

**[PROPOSED] ORDER SHORTENING
TIME FOR PLAINTIFFS' MOTION TO
COMPEL RESPONSES TO CERTAIN
INTERROGATORIES**

This matter comes before the Court on Plaintiffs' Motion To Shorten Time On Plaintiffs' Motion To Compel Responses To Certain Interrogatories. Upon consideration of the memoranda filed in support, the Court hereby GRANTS Plaintiff's Motion To Shorten Time On Plaintiffs' Motion To Compel Responses To Certain Interrogatories. Defendant's Opposition Brief in this matter, if any,

1 shall be filed no later than March 21, 2008. Plaintiffs shall not file a Reply. No oral argument on
2 Plaintiffs' Motion To Compel Responses To Certain Interrogatories will be heard. The Court will
3 issue a ruling on Plaintiffs' Motion To Compel based on the filed briefs.

4 It is SO ORDERED.

5 Dated: March _____, 2008

6 The Honorable Richard Seeborg
7 United States District Court Magistrate Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28